IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4044 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PEOPLE'S CO-OPERATIVE BANK LTD - Petitioner(s)
Versus
ZALAK ENTERPRISES THR' ITS PROPRIETOR & 2 - Respondent(s)

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Appearance :
MS MEGHA JANI for Petitioner(s) : 1,
MR VASANT S SHAH for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/10/2006

ORAL JUDGMENT

1. Rule. Learned advocate for the petitioner for the purpose of this petition seeks permission to delete respondent no.1. Permission is granted.

Learned advocate Shri Vasant S. Shah waives service of notice of rule on behalf of respondents no. 2 and 3.

2. In this petition, the petitioner-cooperative bank has challenged an order dated 7-2-2006 passed by the Cooperative Tribunal in Review Application No.19/2005 filed by the respondents no. 2 and 3 herein.

3. The respondents no. 2 and 3 were guarantors in the loan given by the petitioner-bank to one Zalak Enterprises which was a proprietary concern. Since there was default in payment of the bank loan, bank instituted a Lavad Suit against the principal borrower as well as respondents no. 2 and 3 herein before the Board of Nominees being Summary Lavad Suit No.1948/2003. In the said suit, the Board of Nominees by an order dated 12-1-2004 granted unconditional leave to defend the suit to the respondents no. 2 and 3 herein. Against the principal borrower, however, the condition of

depositing Rs.2,25,000/- was imposed to permit the principal borrower to defend himself. The bank filed revision application before the Cooperative Tribunal against granting of unconditional leave to defend to respondents no. 2 and 3 herein. Initially the Tribunal by an order dated 21-3-2005, partially allowed the revision application of the bank and imposed the condition of depositing Rs. 50,000/- each on these respondents to permit themselves to defend the suit. However, these respondents filed a review application before the Cooperative Tribunal which came to be allowed by impugned order dated 7-2-2006. In the said order, the Tribunal was pleased to delete the condition of depositing Rs. 50,000/- and consequently, was pleased to reject the revision application filed by the bank. It is this order of the Tribunal which has been challenged by the petitioner-bank in this petition.

4. Having heard learned advocates appearing for the parties, I find that the Tribunal erred in

exercising review powers and rejecting the revision application of the bank.

5. While imposing the above limited condition of respondents no. 2 and 3 herein, by an earlier order dated 21-3-2005, the Tribunal had given reasons in support of its conclusions. Thereafter, without there being even additional material available on record, in terms of provisions contained in Section 151 of the Gujarat Cooperative Societies Act(here-in-after referred to as “the said Act”), it was not open for the Tribunal to review its own order on the ground that a particular decision was cited by the respondents.

6. Section 151 of the said Act reads as follows :

“151. Review of orders of Tribunal

1. The Tribunal may, either on the application of the Registrar, or on the application of any party interested, review its own order in any case, and pass in reference thereto such order as it thinks just:

Provided that, no such application made by the party interested shall be entertained, unless the Tribunal is satisfied that there has been discovery of new and important matter of evidence, which after the exercise of due

diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reasons.:

Provided further that, no such order shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such order.

2. An application for review under sub-section(1) by any party, shall be made within ninety days from the date of the communication of the order of the Tribunal."

7. I find that the conditions required for permitting the Tribunal to review its own judgement were not present in this case and the Tribunal therefore, without giving sufficient reasons in my view erred in reviewing its own earlier decision.

8. Learned advocate Shri Shah for the respondents placed reliance on the decision of Hon'ble Supreme Court in the case of M/s. Mechalec Engineers & Manufacturers v. M/s. Basic Equipment Corporation reported in AIR 1977 Supreme Court 577 and submitted that when the said respondents had bona fide defences available at the very outset, it was not open

for the Tribunal to impose any condition for granting leave to defend and when such decision was pointed out to the Tribunal, Tribunal correctly recalled its earlier order.

9. I am afraid the contention cannot be accepted. Firstly, the Tribunal had given cogent reasons for imposing condition. Secondly, there was no further material on record permitting the Tribunal to review its order or at-least any discussion in the impugned order. Further even these respondents have not denied being guarantors.

10. Considering all these aspects of the matter, I find that order of the Tribunal dated 7-2-2006 cannot be sustained, the same is therefore, quashed. It would be open for the respondents no. 2 and 3 herein to deposit Rs. 50,000/- each to permit them to defend themselves in the Lavad Suit within a period of four weeks from today.

11. The petition is disposed of. Rule made absolute

accordingly with no order as to costs.

(Akil Kureshi, J.)

(raghu)